JAMES AND ANNA WILLIS

IBLA 71-159 Decided June 29, 1972

Appeal from decision by the Sacramento land office rejecting appellants' application S-1163 to purchase land pursuant to the Mining Claim Occupancy Act.

Affirmed.

Mining Claim Occupancy Act: Qualified Applicant

> To qualify for relief under the Mining Claim Occupancy Act of October 23, 1962, an applicant must show that he is a residential occupant-owner of valuable improvements in an unpatented mining claim which constitutes for him a principal place of residence in which he and his predecessors were in possession of for not less than seven years prior to July 23, 1962, or that he is the heir or devisee of such resident owner-occupant.

APPEARANCES: James N. Willis, pro se.

OPINION BY MR. STUEBING

James N. and Anna M. Willis have appealed from the December 2, 1970, decision of the Sacramento land office, Bureau of Land Management, which rejected their application to purchase a portion of the Last Chance placer mining claim pursuant to the Act of October 23, 1962, as amended, (30 U.S.C. 701 et seq.). The rejection was based upon the finding by the land office that the applicants were not qualified under the Act by reason of the fact that the claims and improvements thereon did not constitute a principal place of residence for appellants for a period of seven years prior to July 23, 1962, as required by the Act and the regulations, nor were they the heirs or devisees of any person so qualified.

The application declares that the dwelling was constructed during the 1930's. In 1940 the locator, Nelda Rowe, sold to a family named Stetter, who, in 1942, sold to the Kinnares, who, in 1952, sold to a family named Dayton, who sold the claim to a family named Hight in 1956, who in turn sold to the appellants in 1958.

The land office decision states:

> The field investigation disclosed that the applicants never lived on the claim during the summers due to a water shortage. The report also stated that the applicants moved off the claim in 1958. Mr. Willis at that time quit his job with the Trinity Alps Lumber Company and moved to Redding, then to Burney, and then to Red Bluff, and back to Hayfork. Mr. Willis was employed by Kimberly Clark from April 16, 1962, until he quit on June 21, 1963, and lived on the claim during that period.
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> Although information in the report indicates that Mr. and Mrs. Willis did occupy the improvements as of October 23, 1962, the claim did not constitute for them a principal place of residence for a period of "not less than 7 years prior to July 23, 1962" as required by the act and regulations.
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> Accordingly, application S-1163 is hereby rejected.

In his appeal James Willis says:

> This decision is very adverse to me and my family as we have invested a large sum of money and work in this property.
>
> Also, most of the statements in the field report are incorrect.

This is the sum total of his appeal. He makes no other allegations. He does not specify in what respects the field report is incorrect. He makes no allegations that he in fact did occupy the premises as a principal place of residence during the seven-year period preceding July 23, 1962.

Where a statement of reasons for appeal does not point out wherein the decision appealed from is in error, as required by the rules of practice, the appeal will be dismissed. Duncan Miller, 65 I.D. 290 (1958). Appellant cannot impose on the department the burden of discovering whether an error has been committed. James L. Knight, A-27374 (September 19, 1956). However, in view of appellants' effort to state reasons for their appeal, we will consider the merits of the case.

Title 30 U.S.C. § 701 (1970) provides that the Secretary may convey any interest up to and including a fee simple to any occupant

of an unpatented mining claim who relinquishes to the United States all right to such claim which he may have under the mining laws. The conveyance may be made only to a qualified applicant who pays an amount established under section 705. A qualified applicant is defined by section 702 as a residential occupant-owner of valuable improvements in an unpatented mining claim which constitutes for him a principal place of residence which he and his predecessors in interest were in possession of for not less than seven years prior to July 23, 1962. United States et al. v. Walker, 409 F.2d 477 (9th Cir. 1969). The right or privilege to qualify as an applicant under the Act cannot be assigned, but it may pass through devise or descent. William and Paul G. Rafferty, A-31085 (March 27, 1970).

Where an applicant has resided only briefly on the claim during the requisite seven-year period, the Secretary, or his delegate, is obliged to determine whether such occupancy is qualifying, since he has the authority to grant relief only to qualified applicants. Funderberg v. Udall, 396 F.2d 638 (9th Cir. 1968).

In the circumstances of this case we find no basis for holding that appellants occupied the claim as a principal place of residence during the seven-year period preceding July 23, 1962.

The possibility of acquiring this land under the Small Tract Act of June 1, 1938, as amended, 43 U.S.C. § 682a (1970) might be explored. However, it should be understood that such a disposition is entirely a matter of land status, classification and departmental discretion.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior (211 DM 13.5; 35 F.R. 12081), the decision appealed from is affirmed.

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Edward W. Stuebing, Member

We concur:

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Newton Frishberg, Chairman

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Anne Poindexter Lewis, Member